



[4380-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9679]

RIN 1545-AJ93

Information Reporting by Passport Applicants

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide information reporting rules for certain passport applicants. These final regulations apply to certain individuals applying for passports (including renewals) and provide guidance to such individuals about the information that must be included with their passport applications.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §301.6039E-1(d).

FOR FURTHER INFORMATION CONTACT: Rosy Lor at (202) 317-6933 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2012, the Internal Revenue Service (IRS) and the Department of Treasury (Treasury Department) published in the **Federal**

Register (77 FR 3964) a notice of proposed rulemaking (REG-208274-86) (the proposed regulations) that proposed amendments to 26 CFR part 301 under section 6039E of the Internal Revenue Code (Code). Section 6039E provides rules concerning information reporting by U.S. passport and permanent resident applicants, and requires specified federal agencies to provide certain information to the IRS.

The proposed regulations set forth the information a U.S. citizen applying for a U.S. passport (passport applicant), other than a citizen who applies for an official passport, diplomatic passport, or passport for use on other official U.S. government business, must provide pursuant to section 6039E. They do not address information reporting by permanent resident applicants. The proposed regulations also withdrew a prior notice of proposed rulemaking (REG-208274-86, 1993-1 CB 822) published in the **Federal Register** (57 FR 61373) on December 24, 1992. The proposed regulations are proposed to be effective for applications submitted after the date final regulations are published in the **Federal Register**.

Comments were received on the proposed regulations. No public hearing was requested or held. After consideration of the comments, this Treasury decision adopts the proposed regulations with minor revisions as described in this preamble.

Explanation and Summary of Comments

Scope of information reporting by passport applicants

The proposed regulations require a passport applicant, other than an individual who applies for an official passport, diplomatic passport, or passport for use on other official U.S. government business, to provide certain information with his or her passport application pursuant to section 6039E. Specifically, the applicant must provide his or her full name and, if applicable, previous name; permanent address and, if different, the applicant's mailing address; taxpayer identifying number (TIN); and date of birth. A commentator requested that the scope of information be limited to the passport applicant's name, TIN, if any, and foreign country of residence, if any. The final regulations do not adopt this comment. Section 6039E(b)(4) grants the Secretary the authority to require any additional information as he may prescribe. The Department of State (State Department) requires the items of information required by these final regulations as part of its application process. Accordingly, the IRS and the Treasury Department believe that requiring this information is not unduly burdensome to the applicant.

Penalty for failure to provide information

The proposed regulations provide guidance on the circumstances under which the IRS may impose a \$500 penalty on a passport applicant who fails to provide the required information. Under the proposed regulations, before assessing the penalty, the IRS will provide to the passport applicant written notice of the potential assessment of the penalty, and the applicant has 60 days (90 days if the notice is addressed to an applicant outside of the United States) to respond to the notice. If the passport applicant demonstrates to the satisfaction

of the Commissioner or the Commissioner's delegate that the failure to provide the required information is due to reasonable cause and not due to willful neglect, after considering all the surrounding circumstances, then the IRS will not assess the penalty.

A commentator requested clarification with respect to when the period for responding begins to run. In response to the comment, the final regulations provide that a passport applicant has 60 days from the date of the notice of potential assessment of the penalty, or 90 days from such date if the notice is addressed to an applicant outside the United States, to respond to the notice.

A commentator requested that additional guidance be provided with respect to the factors that will be considered in determining whether a passport applicant has established reasonable cause for the failure to provide the required information. The comment was not adopted because this factual determination by the IRS is made on a case-by-case basis and involves consideration of all the surrounding circumstances.

Other Comments Received

Commentators requested that the proposed regulations be withdrawn because they may unduly affect the right of U.S. citizens to travel and apply for a U.S. passport. The IRS and the Treasury Department coordinated with the State Department in promulgating the proposed and final regulations. These regulations do not affect the manner in which the State Department processes passport applications, and Code section 6039E requires information reporting by

passport applicants for tax administration purposes. Accordingly, the comments were not adopted.

The proposed regulations provide that the rules would apply to passport applications submitted after the date of publication of the Treasury decision adopting these rules as final regulations. A commentator requested that the regulations be effective for applications submitted after January 1st of the year following the date the regulations are published, rather than for applications submitted after the date the final regulations are published, on grounds that section 7805(b) of the Code requires such a delay of the effective date. This comment was not adopted. Section 7805(b), as amended in 1996 by the Taxpayer Bill of Rights 2, only applies with respect to regulations which relate to statutory provisions enacted on or after July 30, 1996. Because section 6039E was enacted in 1986, section 7805(b) does not apply to these final regulations. Furthermore, even if the version of section 7805(b) cited by the commentator were to apply, section 7805(b) does not require the requested delay of the effective date. This is so because the final regulations apply to passport applications submitted after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**, which is not before January 26, 2012, the date of the proposed regulations. See section 7805(b)(1)(B). Accordingly, these final regulations adopt the effective/applicability date included in the proposed regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f), this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Rosy Lor of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Seals and insignia, Statistics, Taxes.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301– PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6039E-1 also issued under 26 U.S.C. 6039E.

Par. 2. Section 301.6039E-1 is added to read as follows:

§301.6039E-1 Information reporting by passport applicants.

(a) In general. Every individual who applies for a U.S. passport or the renewal of a passport (passport applicant), other than a passport for use in diplomatic, military, or other official U.S. government business, shall include with his or her passport application the information described in paragraph (b)(1) of this section in the time and manner described in paragraph (b)(2) of this section.

(b) Required information--(1) In general. The information required under paragraph (a) of this section shall include the following information:

- (i) The passport applicant's full name and, if applicable, previous name;
- (ii) The passport applicant's permanent address and, if different, mailing address;
- (iii) The passport applicant's taxpayer identifying number (TIN), if such a number has been issued to the passport applicant. A TIN means the individual's social security number (SSN) issued by the Social Security Administration. A passport applicant who does not have an SSN must enter zeros in the appropriate space on the passport application; and
- (iv) The passport applicant's date of birth.

(2) Time and manner for furnishing information. A passport applicant must provide the information required by this section with his or her passport application, whether by personal appearance or mail, to the Department of State (including United States Embassies and Consular posts abroad).

(c) Penalties--(1) In general. If the information required by paragraph (b)(1) of this section is incomplete or incorrect, or the information is not filed in the time and manner described in paragraph (b)(2) of this section, then the passport applicant may be subject to a penalty equal to \$500 per application. Before assessing a penalty under this section, the IRS will provide to the passport applicant written notice of the potential assessment of the \$500 penalty, requesting the information being sought, and offering the applicant an opportunity to explain why the information was not provided with the passport application. A passport applicant has 60 days from the date of the notice of the potential assessment of the penalty (90 days from such date if the notice is addressed to an applicant outside the United States) to respond to the notice. If the passport applicant demonstrates to the satisfaction of the Commissioner (or the Commissioner's delegate) that the failure is due to reasonable cause and not due to willful neglect, after considering all the surrounding circumstances, then the IRS will not assess the penalty.

(2) Example. The following example illustrates the provisions of paragraph (c) of this section.

Example. C, a citizen of the United States, makes an error in supplying information on his passport application. Based on the nature of the error and C's timely response to correct the error after being contacted by the IRS, the

Commissioner concludes that the mistake is due to reasonable cause and not due to willful neglect. Accordingly, no penalty is assessed.

(d) Effective/applicability date. This section applies to passport applications submitted after **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

John Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: June 26, 2014

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).

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